RAYMOND J.
SEIGFRIED
STATE REPRESENTATIVE
7TH District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Health & Human Development, Vice-Chair
Economic Development / Banking / Insurance / Commerce
Energy
Housing & Community Affairs
Veterans Affairs

Interagency Pharmaceuticals Purchasing Study Group

Meeting Minutes | January 24, 2020
House Hearing Room, 2nd Floor of Legislative Hall (411 Legislative Ave Dover, DE 19901)

Co-Chair Representative Seigfried called the meeting to order at 1:34pm.

Members present included Co-Chair Seigfried, Co-Chair Senator Poore, Dean Stotler, Trinidad Navarro, Steve Groff, Faith Rentz, Tony Ward and Representative Michael Smith. Sec. Dr. Walker was not present but sent Elisabeth Scheneman as a designee. Victoria Brennan was not present but Controller General Michael Morton was present instead. Not present were Terry Hollinger, Dr. Richard Margolis, Dr. Mar Richman, and Sen. Brian Pettyjohn. Also present were Dr. Hooshang Shanehsaz, Leslie Ledogar, Esq., and Debbie Gottschalk, Esq. Robert Scoglietti was present via phone call.

Co-Chair Seigfried distributed meeting minutes form the December 18 and January 17 meetings and asked for a motion to approve both sets of minutes.

A motion to approve both sets of minutes was made by Mr. Stotler and seconded by Mr. Groff.

All Study Group members present voted unanimously to approve both sets of meeting minutes.

Co-Chair Seigfried distributed a New York Times article. Please see Appendix 1 attached at the end of these minutes.

Co-Chair Seigfried distributed an updated draft final report and asked for comments.

Dr. Shanehsaz pointed out a typographical error; on the first page, the word "counties" in the quote should read "countries".

Co-Chair Seigfried asked for a motion to approve the final report, with Dr. Shanehsaz' edit.

A motion to approve the final report was made by Rep. Smith and seconded by Mr. Morton.

All Study Group members present voted unanimously to approve the final report.

Co-Chair Seigfried distributed an updated version of the legislation. Please See Appendix 2 attached at the end of these minutes. He asked for a motion to approve the legislation.

A motion to approve the legislation was made by Co-Chair Sen. Poore and seconded by Rep. Smith.

411 Legislative Avenue, Legislative Hall, Dover, DE 19901
Office: 302-577-8476 Fax: 302-739-2313
Ray.Seigfried@state.de.us

RAYMOND J.
SEIGFRIED
STATE REPRESENTATIVE
7TH District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Health & Human Development, Vice-Chair
Economic Development / Banking / Insurance / Commerce
Energy
Housing & Community Affairs
Veterans Affairs

All Study Group members present voted unanimously to approve the legislation.

Co-Chair Seigfried opened the floor for public comment.

Seeing none, Co-Chair Seigfried expressed his gratitude to all the Study Group members and participants for their efforts.

The meeting ended at 1:42pm.

These minutes respectfully submitted by:

Scott Murphy Eisenhart
Legislative Aide – Representative Raymond Seigfried

411 Legislative Avenue, Legislative Hall, Dover, DE 19901
Office: 302-577-8476 Fax: 302-739-2313
Ray.Seigfried@state.de.us

The New York Times https://nyti.ms/2vjaLXB

Appendix 1

Insys Founder Gets 5½ Years in Prison in Opioid Kickback Scheme

The company executive, John Kapoor, was accused of bribing doctors and misleading insurers to increase sales of a highly addictive painkiller.

By Katie Thomas

Jan. 23, 2020

A federal judge sentenced John Kapoor, the founder of the opioid manufacturer Insys Therapeutics, to five and a half years in prison Thursday for his role in a racketeering scheme that bribed doctors to prescribe a highly addictive opioid and misled insurers.

The case had been closely watched because it represented a rare criminal inquiry into the practices of a drug company that aggressively sold painkillers while the nation was in the grip of a deadly opioid epidemic that killed thousands of people in the last decade.

Beth Wilkinson, a lawyer for Mr. Kapoor, declined to comment on the sentencing but said she planned to appeal.

Federal prosecutors have said that Insys, based in Arizona, embarked on an intensive marketing plan — including paying doctors for sham educational talks and luring others with lap dances — to sell its under-the-tongue fentanyl spray, Subsys, which was federally approved to treat patients with cancer.

Doctors were urged to write prescriptions for a much wider pool or patients, and to mislead insurance companies so they would pay for the expensive medication.

In court Thursday, Mr. Kapoor said he had created the company in part because he witnessed the suffering of his wife, who had died of cancer. "I wanted to believe in Subsys perhaps too much," he said. "I never wanted Subsys to be prescribed to patients who did not need it."

Judge Allison D. Burroughs of Federal District Court in Boston also sentenced other former Insys executives this week for their roles in the scheme. They included the former vice president of sales, Alec Burlakoff, 46, of West Palm Beach, Fla., who was sentenced Thursday to 26 months in prison and three years of supervised release.

In November 2018, Mr. Burlakoff — who once so enthusiastically peddled the product that he dressed in a Subsys costume as part of a promotional rap video — pleaded guilty to one count of racketeering conspiracy and agreed to cooperate with the government.

On Wednesday, the judge sentenced the company's former chief executive, Michael L. Babich, 43, of Scottsdale, Ariz., to 30 months in prison and three years of supervised release. In January 2019, Mr. Babich pleaded guilty to one count of conspiracy to commit mail fraud and wire fraud and one count of mail fraud, and agreed to cooperate with the government.

Other executives who were sentenced included Sunrise Lee, a former regional sales director, who was sentenced to one year and one day in prison; Joseph A. Rowan, another former regional sales director, who was sentenced to 27 months in prison; and Richard M. Simon, a former national director of sales, who was sentenced to 33 months in prison. A former vice president, Michael J. Gurry, was sentenced to 33 months in prison earlier this month.

After its former executives were found guilty, Insys agreed to pay $225 million to settle federal fraud charges and to divest of Subsys, and then it filed for bankruptcy.

Gabrielle Emanuel contributed reporting.

Appendix 2

SPONSOR:

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO PHARMACEUTICAL PURCHASING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 63A, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6317A. Interagency Pharmaceutical Purchasing Collaborative.

(a)(1) The Interagency Pharmaceutical Purchasing Collaborative ("Collaborative") is established to fully leverage the State's purchasing power and regulatory authority to maximize savings for all agencies and departments that contract for or directly purchase pharmaceuticals.

(2) The Collaborative will maintain a working relationship between agencies that purchase pharmaceuticals, including the State Employee Benefits Committee, the Division of Medicaid and Medical Assistance, and the Department of Correction.

(b)(1) The Collaborative is comprised of the following voting members, or a designee selected by the member serving by virtue of position:

a. A State Representative, appointed by the Speaker of the House of Representatives.

b. A State Senator, appointed by the President Pro Tempore of the Senate.

c. Controller General.

d. Insurance Commissioner.

e. Director, Office of Management and Budget.

f. Secretary, Department of Health & Social Services.

g. Commissioner, Department of Correction.

h. Secretary, Department of Human Resources.

(2) The Collaborative is comprised of the following non-voting members, or a designee selected by the member serving by virtue of position:

a. Director, Division of Medicaid and Medical Assistance.

b. Chief Pharmacist.

(c) A member of the Collaborative with the ability to designate another individual to attend a Collaborative meeting under subsection (b) of this section must provide the designation in writing to the chair. An individual attending a meeting for a member as a designee has the same duties and rights as the member.

(d)(1) The Director of the Office of Management and Budget is the chair of the Collaborative and must provide the Collaborative with administrative support, including the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports.

(2) In the absence of the chair, the vice-chair shall fulfill the duties of the chair. The vice-chair of the Collaborative is as follows:

a. The member appointed by the Speaker of the House of Representatives is the vice-chair during even-numbered years.

b. The member appointed by the President Pro Tempore of the Senate is the vice-chair during odd-numbered years.

(3)a. A quorum of the Collaborative is a majority of its voting members.

b. Official action by the Collaborative requires the approval of a quorum of the Collaborative.

c. The Collaborative may adopt rules necessary for its operation and may create working subcommittees.

d. The chair of the Collaborative may invite individuals with relevant expertise to participate in the Collaborative's discussions, including an executive session.

(4)a. The Collaborative may go into executive session to discuss information that is not a public record under Chapter 100 of Title 29.

b. Any document received or generated by the Collaborative is not a public record under Chapter 100 of Title 29.

c. Notwithstanding paragraphs (d)(4)a. through (d)(4)b. of this section, documents received from the public at, agendas for, or minutes of the Collaborative's public meetings are a public record under Chapter 100 of Title 29, unless determined not to be public record under § 10002(*l*) of Title 29.

(e) The Collaborative must do all of the following:

(1) Perform data analysis of the prices paid by each State agency for the purchase of pharmaceutical drugs and services and create a data analytic profile.

(2) Build and maintain a market database by doing all of the following:

a. Assessing the value, as determined by cost and patient outcome, of individual drugs.

b. Calculating the volume of individual drug purchases by all State agencies.

(3) No later than October 1, 2021, use the market database developed under paragraph (e)(2) of this section to identify opportunities to leverage inter-agency pharmaceutical purchasing that may include joining any of the following:

a. A consortium with 1 or more states.

b. A group purchasing agreement under § 6987 of this title.

(4) No later than October 1, 2021, an agency must use the market database when purchasing pharmaceutical drugs and services.

(5) Explore the creation of a public pharmaceutical program.

(f) The Collaborative may enter into a contract to complete the work required under subsection (e) of this section. The Collaborative directs the work of a contractor hired under this subsection.

(g) In connection with the duties of the Collaborative, the Director of the Office of Management and Budget, or the Director's designee, may issue subpoenas for witnesses or documents, financial records or any other source of information needed to perform the work required under subsection (e) of this section. If a person subpoenaed fails to comply, the Office of Management and Budget may compel compliance with the subpoena by filing a motion to compel in the Superior Court, which has jurisdiction to compel compliance.

(h)(1) The Collaborative must prepare an annual report that includes all of the following:

a. The analysis required under paragraph (e)(1) of this section.

b. The status of the requirements under paragraphs (e)(2) through (e)(4) of this section.

(2) By March 1, the Collaborative must submit the report required under paragraph (h)(1) of this section to the President Pro Tempore of the Senate and the Speaker of the House of Representatives, with copies to all members of the General Assembly, the Governor, the Director and the Librarian of the Division of Research of Legislative Council, and the Delaware Public Archives.

Section 2. Amend § 6937, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6937. Special requirements for contracts to purchase pharmaceuticals.

(a) A contract to purchase pharmaceuticals entered into after June 30, 2020, must include a requirement that the contractor provide the agency with all of the following information:

(1) The wholesale acquisition cost negotiated between a pharmacy benefit manager and manufacturer at any point in time for each drug purchased by the State.

(2) The dollar amount of rebates, discounts, and price concessions that a pharmacy benefit manager received for each drug purchased by the State. The dollar amount of rebates must include all utilization discounts the pharmacy benefit manager receives from a manufacturer.

(3) The nature, type, and dollar amount of all other payments that a pharmacy benefit manager receives, directly or indirectly, from a manufacturer in connection with a drug switch program, a formulary management program, a mail service pharmacy, educational support, data sales related to a covered individual, or any other function purchased by the State.

(4) The dollar amount of each reimbursement a pharmacy benefit manager pays to contracting pharmacies, and the negotiated price covered entities pay the pharmacy benefit manager, for each drug purchased by the State.

(b) Information received or generated under this section is not a public record under Chapter 100 of Title 29.

Section 3. The chair shall convene the first meeting of the Interagency Pharmaceutical Purchasing Collaborative before August 1, 2020.

Section 4. The Secretary of the Department of Health & Social Services must do all of the following:

(1) Before March 31, 2021, hire a consultant, under § 6317A(f) of Title 29, to perform data analysis work required under § 6317A(e)(1) of Title 29.

(2) Provide and purchase the data analytics required under § 6317A(e)(1) of Title 29.

(3) Hire a Chief Pharmacist to supervise the Interagency Pharmaceutical Purchasing Collaborative's data analysis work under § 6317A(e) of Title 29.

SYNOPSIS

This Act implements recommendations of the Interagency Pharmaceuticals Purchasing Study Group created by House Concurrent Resolution No. 35.

First, this Act creates the Interagency Pharmaceutical Purchasing Collaborative ("Collaborative") to leverage the total volume of State pharmaceutical purchases to negotiate lower prices. The Collaborative must conduct a data analysis of current pharmaceutical purchasing prices paid by State agencies to create a data analytic profile. After building the data analytic profile, the Collaborative must build a market database by assessing the value, as determined by cost and patient outcome, of individual drugs and calculating the volume of individual drug purchases by all State agencies. The Collaborative must use the market database to identify opportunities to leverage the total volume of State pharmaceutical purchases to negotiate lower prices which may include a group purchasing agreement or a consortium with other states.

Second, this Act requires that State agency contracts to purchase pharmaceuticals must contain specific transparency provisions. These transparency provisions will allow the State to monitor and control the cost of pharmaceutical purchases.

Finally, this Act clearly provides that information received or generated by the Collaborative or under contract transparency provisions is not public information under the Freedom of Information Act. However, the Collaborative must provide an annual report that summarizes the Collaborative's work.